

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13383, of Lucille E. Jeter, et al., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the off-street parking requirements (Sub-section 7202.1) and the play area requirements (Sub-paragraph 3104.342) to use the first and second floors of the subject premises as a day care center consisting of thirty-six children and four teachers in an R-4 District at the premises 1311 Oates Street, N.E., (Square 4062, Lot 180).

HEARING DATE: November 19, 1980

DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. The subject property is located on the south side of Oates Street, N.E., at its intersection with Orren Street, N.E. It is in an R-4 District at premises known as 1311 Oates Street, N.E.
2. The site is presently improved with a two story brick structure. The first floor is used as a day care center for ten students, and one teacher. Certificate of Occupancy No. B-93558 issued February 20, 1976, permitted nine students.
3. The applicant proposes to expand the existing facility to the second floor for a total accommodation of thirty-six children ages 2 through 5 and four teachers.
4. The subject property is rectangular in shape, with a frontage of 77.50 feet on Oates Street and 32.50 on Orren Street. It is approximately 2,868 square feet in area.
5. Pursuant to Sub-paragraph 3104.342 of the Zoning Regulations, not less than 100 square feet of play area for each child in attendance must be provided on the same lot as the nursery school. This would require the applicant to provide a minimum of 3,600 square feet. The applicant provides approximately 1,750. Thus a variance of 1,850 square feet is required.
6. The applicant is also required to provide two off-street parking spaces. None are proposed to be provided. Thus a variance from Sub-section 7202.1 of the Zoning Regulations is required.
7. The applicant presented no evidence or testimony that the property itself is affected by any exceptional or extraordinary condition that would warrant the granting of a variance.

8. The applicant presented no evidence or testimony about what practical difficulty she would suffer if the Zoning Regulations were strictly applied.

9. Advisory Neighborhood Commission - 5B by report, dated November 25, 1980, opposed the application on the grounds that the area is presently overcrowded with on-street parking, that the entire area is being considered for two hour residential parking permit program, and that there was insufficient parking to serve the proposed requested school. The ANC also argued that the entire floor area is inadequate space for occupation by thirty-six children. The Board concurs.

10. The applicant proposed the use of the nearby Wheatley Elementary School playground as outdoor play space. By letter dated November 25, 1980, Ruth S. Bannister, Principal of Wheatley Elementary School stated that the playground is available for use by the day care center between 1:30 and 2:45 P.M., each day. By letter dated December 22, 1980, the applicant advised that, due to the time restrictions on the use of the Wheatley School, she intended to use the facilities of the public playground at Morse Street and Trinidad Avenue, two and one-half blocks from the subject site. Given the ages of the children involved, the Board finds that to be an inadequate substitute for on-site play area. The Board further finds that the availability of any off-site play area is not a proper basis for the granting of a variance to the subject property.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the applicant has demonstrated no basis for the granting of a variance. There is no exceptional or extraordinary condition of the property, and the applicant has specified no practical difficulty which would result if the Zoning Regulations were strictly applied. The Board concludes that the variance derives solely out of the number of children proposed for the school which is not a condition of the property.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board concludes that the requested relief cannot be granted without substantially detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board notes that the property appears to be large enough to provide play space, sufficient to meet the requirements of the Zoning Regulations, for more than the nine children now permitted by the existing Certificate of Occupancy. The applicant is advised that a school with a lesser number of children and teachers may be permitted as a matter-of-right under the Zoning Regulations. The applicant is advised to consult with the office of the Zoning Administrator to determine how many children may be permitted without a variance.

Based on the Findings and Conclusions set forth in this ORDER, it is therefore ORDERED that the application is DENIED.

VOTE: 5-0 (Douglas J. Patton, Charles R. Norris, Theodore F. Mariani, William F. McIntosh and Connie Fortune to DENY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 30 APR 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."